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8 **BEFORE THE**
9 **BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against,

Case No.: 854-A

13 **RAFAEL DETALBAN DIVINA**
14 **624 North Granada Drive**
Madera, CA 93637
15 **Civil Engineer License No. C 30011**

A C C U S A T I O N

Respondent.

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17 Complainant alleges:

18 **PARTIES**

- 19 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity
20 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,
21 Department of Consumer Affairs.
- 22 2. On or about February 14, 1979, the Board for Professional Engineers and Land
23 Surveyors issued Civil Engineer Number C 30011 to Rafael Detalban Divina (Respondent).
24 Respondent's civil engineer license was in full force and effect at all times relevant to the charges
25 brought herein and will expire on September 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board for Professional Engineers and Land Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.

All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 6775 of the Code states, in pertinent part, that "[T]he board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

...

(b) Who has been found guilty by the board of any deceit, misrepresentation, or fraud in his or her practice.

(c) Who has been found guilty by the board of negligence or incompetence in his or her practice.

(d) Who has been found guilty by the board of any breach or violation of a contract to provide professional engineering services.

...

(f) Who aids or abets any person in the violation of any provision of this chapter.

(g) Who in the course of the practice of professional engineering has been found guilty by the board of having violated a rule or regulation of unprofessional conduct adopted by the board.

(h) Who violates any provision of this chapter.

5. Section 6730 of the Code states, in pertinent part that, "[i]n order to safeguard life, health, property and public welfare, any person, either in a public or private capacity, except as in this chapter specifically excepted, who practices, or offers to practice, civil engineering, electrical engineering or mechanical engineering, in any of its branches in this state . . . shall submit evidence that he or she is qualified to practice, and shall be licensed accordingly as a civil engineer, electrical engineer or mechanical engineer by the board."

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1 6. Section 6731 of the Code states:

2 Civil engineering embraces the following studies or activities in
3 connection with fixed works for irrigation, drainage, waterpower, water
4 supply, flood control, inland waterways, harbors, municipal
5 improvements, railroads, highways, tunnels, airports and airways,
6 purification of water, sewerage, refuse disposal, foundations, grading,
7 framed and homogeneous structures, buildings, or bridges:

8 (a) The economics of, the use and design of, materials of construction and
9 the determination of their physical qualities.

10 (b) The supervision of the construction of engineering structures.

11 (c) The investigation of the laws, phenomena and forces of nature.

12 (d) Appraisals or valuations.

13 (e) The preparation or submission of designs, plans and specifications and
14 engineering reports.

15 (f) Coordination of the work of professional, technical, or special
16 consultants.

17 (g) Creation, preparation, or modification of electronic or computerized
18 data in the performance of the activities described in subdivisions (a)
19 through (f).

20 Civil engineering also includes city and regional planning insofar as any
21 of the above features are concerned therein. Civil engineers registered
22 prior to January 1, 1982, shall be authorized to practice all land surveying
23 as defined in Chapter 15 (commencing with Section 8700) of Division 3.

24 7. Section 6732 of the Code states, in pertinent part that, "[i]t is unlawful for anyone
25 other than a professional engineer licensed under this chapter to stamp or seal any plans,
26 specifications, plats, reports, or other documents with the seal or stamp of a professional engineer,
27 or in any manner, use the title "professional engineer," "licensed engineer," "registered engineer,"
28 or "consulting engineer," or any of the following branch titles: . . . "electrical engineer," . . .
 "mechanical engineer," . . . or any combination of these words and phrases or abbreviations
 thereof unless licensed under this chapter."

 8. Section 6737.2 of the Code states, "[n]othing in this chapter shall prohibit a civil
engineer, registered under the provisions of this chapter, from practicing or offering to practice
any engineering in connection with or supplementary to civil engineering studies or activities as
defined in Section 6731."

9. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

GENERAL BACKGROUND

North Maple Project

11. On or about October 12, 2004, the Enforcement Unit of the Board received a complaint from Raul Gonzalez, Structural Plans Examiner for the City of Fresno, against Respondent. Gonzalez alleged that Respondent was negligent and/or incompetent in his civil engineering practice for a project located at 7190 North Maple Avenue in Fresno, California (North Maple Project). Gonzalez claimed that, through numerous submittals of plans that failed to address problems on the project, Divina demonstrated a lack of engineering knowledge.

North Wilson Project

12. On or about June 10, 2005, the Enforcement Unit of the Board received another complaint from Raul Gonzalez, Structural Plans Examiner for the City of Fresno, against Respondent. Gonzalez alleged that Respondent was negligent and/or incompetent in his civil engineering practice for a project located at 1460 North Wilson in Fresno, California (North Wilson Project). Gonzalez claimed that in the six months following his original complaint on the North Maple Project, Respondent had continued to submit deficient work to the City for review.

Howard Mini-Storage Project

13. On or about September 6, 2005, the Enforcement Unit of the Board received a complaint from Dale Waun against Respondent. Waun alleged that Respondent was negligent and/or incompetent, and in breach of contract regarding civil engineering services he was hired to perform for a mini-storage facility located at 3391 and 3461 Howard Road in Madera, California (Howard Mini-Storage Project).

FIRST CAUSE FOR DISCIPLINE

(Negligence/Incompetence - North Maple Project)

14. Paragraphs 1 through 13 are incorporated herein by reference.

15. Respondent is subject to disciplinary action under section 6775, subdivision (c), in that he was guilty of negligence or incompetence in his practice for the North Maple Project from approximately December 2004 through June 2004, as follows:

a. Respondent failed to provide appropriate information within the structural calculations that a licensed architect would use to assemble project drawings and specifications of “sufficient clarity” and “to show in detail that it (the project being permitted) will conform to the provisions of this code” required in Section 106.3.3 of the Uniform Building Code (UBC).

b. Respondent failed to engineer provisions for conventional light-frame construction that met the limitations for conventional framing, even though they are clearly identified in Section 2320 of the UBC, and were identified for him by the building department.

c. In the third submittal calculations Respondent reduced the applied wind loading from Exposure C to Exposure B, despite the lack of evidence suggesting that the building department allowed this reduction in force.

d. Respondent’s calculations from the first submittal reported an uplift (and consequent compressive) force of 10,660 lbs. at the end of shear walls located along Line A but Respondent did not justify the adequacy of the foundation system to resist such large forces.

e. Respondent failed to take into account a gap in his drawings – a 1/2” gap along lines 2, 3 and 4, which means that the shear walls along lines A, B and B2 cannot be considered continuous across this gap for the determination of hold-down forces.

f. Respondent improperly included “anchor bolts” in the first and second submittal calculations for the second level shear wall fastening to the first level.

g. An upper level shear wall occurs atop a beam spanning across the garage, but Respondent failed to describe in the first and second submittal calculations how the lateral forces are to be transferred to the nearest offset shear wall on the lower level.

h. Respondent's second submittal calculations show the redundancy factor to be "DIV/0!", which is incorrect output.

i. In his first and second submittals Respondent incorrectly added the overturning effects of the stacked shear walls throughout the building.

SECOND CAUSE FOR DISCIPLINE

(Negligence/Incompetence - North Wilson Project)

16. Paragraphs 1 through 15 are incorporated herein by reference.

17. Respondent is subject to disciplinary action under section 6775, subdivision (c), in that he was guilty of negligence or incompetence in his practice for the North Wilson Project from approximately March 2005 through May 2005, as follows:

a. Respondent failed to include the required grade for the redwood stringers called out for in his plans.

b. Respondent failed to include clear bolt spacing for the anchorage of the handrail and guardrail posts.

c. Detail F/A2 does not make sense and does not appear to apply anywhere on the project.

d. In Plan B on Drawing A2, Respondent improperly called for lag screws to be embedded 6 inches into an existing 2x4 wall stud which is impossible as the greatest depth of wood available is 3.5", the depth of the stud.

e. In the stair stringer calculations, Respondent incorrectly used the entire section for load resistance, not taking into account that the stringers have notches built into them to receive the tread.

f. Respondent improperly used two different live loads for design of the stair stringers.

g. Respondent used the incorrect formula to determine the bending moment in his stringer design for 40 psf.

h. Respondent indicated in Detail P/A2 that a triple 2x14 stringer (width = 4.5") is to be supported by a Simpson LUS 28 hanger (width 1.5"), which renders it un-buildable.

i. Respondent's design shows that the stringer is sloped and the hanger is shown straight, resulting in a "knife-edge" support of the wood members, which is prohibited by the hanger manufacturer.

j. Respondent designed the handrail with a height of 3' - 0, whereas the actual height must be determined considering the effect of placement of the bolts.

THIRD CAUSE FOR DISCIPLINE

(Negligence/Incompetence - Howard Mini-Storage Project)

18. Paragraphs 1 through 17 are incorporated herein by reference.

19. Respondent is subject to disciplinary action under section 6775, subdivision (c), in that he was guilty of negligence or incompetence in his practice for the Howard Mini-Storage Project from approximately May 2004 through February 2005, as follows:

a. In Drawing 4 Respondent failed to include a well-defined gutter system along the south driveway of the property to direct surface water around the southerly buildings in such a way as to be consistent with the direction and placement of arrows indicating the desired drainage pattern, there is not enough slope defined by the given grades, and they do not match the typical 1% specified on the plans.

b. Respondent's resubmittal plans are unclear as to the extent of work required along Howard Road, and the delineation and extent of new versus existing paving is not defined on the plan.

c. An un-numbered plan in Respondent's resubmittal plans shows a paving cross-section through Howard Road but is not clear on the placement and relationship of the asphalt thickness, 8" aggregate base and 95% compacted sub-base.

d. Respondent was unable to complete the project for his client, despite having presented himself as able to do so.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Misrepresentation)**

3 20. Paragraphs 1 through 19 are incorporated herein by reference.

4 21. Respondent is subject to disciplinary action under section 6775, subdivision (b), in
5 that he was guilty of misrepresentation in a tenant improvement project located at 40034
6 Highway 49, #A-1, in Oakhurst, California (Highway 49 Project) in the period from
7 approximately May 2004 through February 2005, as follows:

8 22. Respondent had a written agreement with the owner of the property to prepare
9 drawings related to the electrical, mechanical, and plumbing portions of the project, however, on
10 or about July 23, 2008, Respondent admitted to the Board's Senior Investigator Michael Poore
11 that he did not prepare the plans.

12 **FIFTH CAUSE FOR DISCIPLINE**

13 **(Unlicensed Practice of Engineering)**

14 23. Paragraphs 1 through 22 are incorporated herein by reference.

15 24. Respondent is subject to disciplinary action under section 6775, subdivision (h), in
16 that Respondent violated Code section 6730 when he practiced mechanical and electrical
17 engineering with out a license on the Highway 49 Project in 2006. The circumstances are as
18 follows:

19 25. On or about March 8, 2006, Respondent contracted with the owner of the property for
20 mechanical and electrical engineering services, yet he was not licensed in California as a
21 mechanical engineer nor as an electrical engineer.

22 26. Respondent does not fall within the exemption contained in Code section 6737.2, as
23 he did not provide civil or structural engineering services, and therefore the mechanical and
24 electrical engineering were not supplemental to civil engineering being performed by Respondent
25 on the same project.

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1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Violation of Contract)**

3 27. Paragraphs 1 through 26 are incorporated herein by reference.

4 28. Respondent is subject to disciplinary action under section 6775, subdivision (b), in
5 that Respondent was in violation of contract in his practice on or about February 3, 2005. The
6 circumstances are as follows:

7 29. On or about May 6, 2004, Respondent entered into a contract with Wood & Waun to
8 complete the Howard Mini-Storage Project. On or about February 3, 2005, Respondent delivered
9 his unfinished plans to Dale Waun with a message indicating that he could not complete the
10 project.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a
14 decision:

15 1. Revoking or suspending Civil Engineer Number C 30011, issued to Rafael Detalban
16 Divina Rafael Detalban Divina.

17 2. Ordering Rafael Detalban Divina to pay the Board for Professional Engineers and
18 Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
19 Business and Professions Code section 125.3;

20 3. Taking such other and further action as deemed necessary and proper.

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22 DATED: 9/10/09

Original Signed

23 DAVID E. BROWN

24 Executive Officer

25 Board for Professional Engineers and Land Surveyors

26 Department of Consumer Affairs

27 State of California

28 *Complainant*

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